

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
FARMERS NEW CENTURY INSURANCE
COMPANY,

Plaintiff,

-against-

JOHN T. PERUGGIA,

Defendant.

-----X
GARY R. BROWN, United States District Judge:

ORDER ADOPTING
REPORT &
RECOMMENDATION
CV 18-1965 (GRB)(SIL)

Before the Court is a report and recommendation by the Honorable Steven I. Locke, U.S. Magistrate Judge, recommending that plaintiff's motion for default judgment be granted in part, and denied in part. R&R, Docket Entry ("DE") 59. For the reasons stated herein, the well-reasoned and thorough report and recommendation is ADOPTED in the entirety.

Plaintiff Farmers New Century Insurance Company ("plaintiff" or "Farmers") commenced this action against defendant John T. Peruggia ("defendant" or "Peruggia") on April 2, 2018. Compl., DE 1.¹ According to the complaint, plaintiff seeks a declaratory judgment that it is not obligated to provide liability insurance coverage to defendant in connection with an underlying personal injury lawsuit captioned *Goldener v. Mongiardo, Reilly, and Peruggia*, Index No. 613157/2017 in the New York Supreme Court, Nassau County ("Underlying Lawsuit"). Compl. 9.

The record suggests that proper service was made on defendant. DE 12. According to the record, no answer, motion or other appearance was filed on behalf of defendant. The Clerk

¹ Three other defendants, Nancy Mongiardo, James Reilly, and Tammy Goldener, have since been terminated from the case. See DE 46, 53; R&R 1.

of the Court has properly entered a notation of default under Federal Rule of Civil Procedure 55(a). DE 24. On December 3, 2019, plaintiff moved for a default judgment against defendant. DE 53. On December 6, 2019, the late Honorable Arthur D. Spatt, Senior U.S. District Judge, referred the motion to Judge Locke for a report and recommendation. DE 57.

On June 22, 2020, Judge Locke recommended in a thorough and careful decision that plaintiff's motion for default judgment should be granted in part and denied in part. R&R 9. Judge Locke recommended that a declaratory judgment be entered providing that Farmers may withdraw from Peruggia's defense in the Underlying Lawsuit because "Defendant's insurance claim arises from the use and operation of the boat, an excluded watercraft, and is therefore not entitled to coverage under the Insurance Policy." R&R 7-8. Judge Locke further recommended that plaintiff's request to be reimbursed for defense costs and indemnification expenses associated therewith be denied without prejudice because "there is nothing in Plaintiff's motion papers to support this request." R&R 9. On June 23, 2020, plaintiff served the report and recommendation upon defendant. DE 60. The case, previously assigned to the Honorable Arthur D. Spatt, was reassigned to the undersigned.

On July 6, 2020, plaintiff filed a letter advising that no objection had been filed to the report and recommendation. DE 61. To date, defendant has not objected or responded in any way in the instant action.

In reviewing a report and recommendation, a court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Bluelinx Corp. v. New York Rebar Supply, Inc.*, No. 12-CV-5916 (ADS)(GRB), 2014 WL 4286003, at *1 (E.D.N.Y. Aug. 28, 2014) (quoting 28 U.S.C. § 636(b)(1)(C)). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court

need only satisfy itself that there is no clear error on the face of the record.” *Id.* (citations omitted). There being no objection, the Court has reviewed Judge Locke’s report and recommendation and finds it to be persuasive and without any legal or factual errors. Therefore, the report and recommendation is adopted in the entirety.

CONCLUSION

Based on the foregoing, the Court adopts Judge Locke’s well-reasoned and thorough report and recommendation in its entirety, and plaintiff’s motion for default judgment is granted in part and denied in part as follows: a declaratory judgment shall be entered that Farmers New Century Insurance Company may withdraw from John T. Peruggia’s defense in *Goldener v. Mongiardo, Reilly, and Peruggia*, Index No. 613157/2017 in the New York Supreme Court, Nassau County, and plaintiff’s request to be reimbursed for defense costs and indemnification expenses associated therewith shall be denied without prejudice. Plaintiff is directed to file a status report within seven (7) days as to whether it will seek to be reimbursed for defense costs and indemnification expenses. The Clerk of the Court shall enter judgment accordingly, and serve a copy of this Order upon defendant.

SO ORDERED.

Dated: Central Islip, New York
July 11, 2020

/s/ Gary R. Brown
GARY R. BROWN
United States District Judge